

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:19-cr-00362-SEB-TAB
)	
MARCUS DILLARD,)	
)	
Defendant.)	

**ORDER DENYING MOTION TO RECONSIDER DENIAL OF MOTION FOR
RELEASE FROM DETENTION BASED UPON THE COVID-19 PANDEMIC**

This matter is before the Court on Defendant, Marcus Dillard’s (“Dillard”) Motion to Reconsider Denial of Emergency Motion for Release from Detention Based Upon the COVID-19 Pandemic. ([Filing No. 42.](#)) For the reasons stated below, the Motion is **denied**.

On April 6, 2020, the Court denied Dillard’s Emergency Motion for Release from Detention, finding that the COVID-19 pandemic and Dillard’s health conditions have not created a compelling reason for his release from detention. ([Filing No. 40.](#)) As noted in the Order denying emergency COVID-19 release, Dillard is a 34-year-old male, presently detained at Henderson County Detention Center in Henderson, Kentucky. He has petitioned the Court to Enter a Plea of Guilty to the charged offenses, Possession with Intent to Distribute Heroin, in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(C), and Carrying a Firearm During and in Relation to a Drug Trafficking Crime, in violation of 18, U.S.C. § 924(c)(1). ([Filing No. 19.](#)) In his plea agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the parties have agreed a sentence of 97 months on both counts.

Dillard requests temporary release to home incarceration because he suffers from asthma and hypertension, “conditions that are each ... associated with a six percent mortality rate from

COVID-19.” He asks the Court to reconsider its denial of his Emergency Motion for Release. Specifically, he protests the Courts finding that “hypertension has not been identified as one of the conditions that places an individual in a higher risk category.” The Court agrees that this finding is incorrect, and people with hypertension (and asthma) who contract COVID-19, have been associated with increased illness severity and adverse outcomes.

Dillard also challenges the Government’s argument that Henderson Detention Center has taken aggressive actions to prevent a coronavirus outbreak. The Court acknowledges Dillard’s argument that there has been no testing for the coronavirus at the facility where he is being held. But there also have been no known outbreaks at the detention facility where Dillard is held.

Even considering the increased risk of Dillard’s health conditions, for the reasons stated in the April 7, 2020 Order, the Court continues to find no combination of conditions exist that will ensure the safety of the community if Dillard is released. As noted previously, the COVID-19 pandemic has reduced the availability of conditions to mitigate the risk to the community and the resources of the United States Probation Office remain limited.

Considering all circumstances—Dillard’s risk Category 4, the strong weight of the evidence, prior criminal history, participation in criminal activity while on probation, parole, or supervision, history of weapons, history substance abuse, prior failure to appear in court as ordered, prior violations of probation, parole, or supervised release, and Dillard was on probation at the time of the instant offense—continued detention is appropriate in order to ensure the safety of the community.

Accordingly, the Motion to Reconsider ([Filing No. 42](#)) is **DENIED**.¹

¹ Dillard’s change of plea and sentencing hearing was to have been held on March 25, 2020, however, due to courthouse closure due to the pandemic the hearing was vacated. The hearing can now be rescheduled and conducted with safe conditions, if the parties consent to those conditions. Dillard may petition the Court for an expedited change of plea and sentencing hearing date and expedited designation to the Bureau of Prisons.

SO ORDERED.

Date: 4/10/2020

A handwritten signature in black ink, reading "Tanya Walton Pratt", is positioned above a horizontal line.

TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

DISTRIBUTION:

Harold Samuel Ansell
INDIANA FEDERAL COMMUNITY DEFENDERS
sam.ansell@fd.org

Abhishek Kambli
UNITED STATES ATTORNEY'S OFFICE
abhishek.kambli@usdoj.gov